

ACTION

§ 1232.12

or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees or volunteers, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce or volunteer force, and

(3) The nature and cost of the accommodation needed.

§ 1232.11 Employment and volunteer selection criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 1232.12 Preemployment or pre-selection inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. For the purpose of this paragraph, "pre-employment" as applied to applicants for volunteer positions means prior to selection as a volunteer.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1232.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1232.8(b) or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment or volun-

teer service to indicate whether and to what extent they are handicapped: *Provided, That:*

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment or volunteer service on the results of a medical examination conducted prior to the volunteer or employee's entrance on duty. *Provided, That:*

(1) All entering volunteers or employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 1232.13 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan which sets forth in detail the steps necessary to complete the changes, and a schedule for taking those steps. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the plan shall be made available for public inspection.

§ 1232.15 New construction.

(a) *Design, construction, and alteration.* New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. construction shall be considered new if ground breaking takes place after the

effective date of the regulation. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[44 FR 31018, May 30, 1979, as amended at 55 FR 52138, 52142, Dec. 19, 1990]

Subpart D—Procedures

§ 1232.16 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§1203.6 through 1203.11 of this title.

PART 1233—INTERGOVERNMENTAL REVIEW OF ACTION PROGRAMS

Sec.

1233.1 What is the purpose of these regulations?

1233.2 What definitions apply to these regulations?

1233.3 What programs of the Agency are subject to these regulations?